



**ZONING BOARD OF ADJUSTMENT**

**Draft Minutes**

**August 25, 2020 - 7:30 pm @ Community Development Department**

**Physical Location: 3 North Lowell Road (Community Development Department)**

**Live Broadcast: WCTV Channel 20 – Local Cable TV**

**Live Stream: <http://www.wctv21.com/>**

**Attendance:**

**Chairman Mike Scholz- present (via Zoom until 8:20pm)**

**Vice Chair Bruce Breton- present (at Community Development)**

**Pam Skinner, Secretary- present (at Community Development)**

**Neelima Gogumalla- present (via Zoom)**

**Nick Shea- excused**

**Betty Dunn, alternate- present (via Zoom)**

**Kevin Hughes, alternate- present (via Zoom)**

**(attendance taken by roll call vote)**

**Staff:**

**Brian Arsenault- ZBA Administrator/ Code Enforcement**

**Anitra Lincicum- minute taker**

***“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, the public body is authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.***

***Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required under the Right-to-Know law.”***

**Public Hearing**

**Case #22-2020: Parcel 9-A-909**

**Applicant - Meisner Brem Corporation**

**Owner - Colleen and David Holding**

**Location – 20 Balmorra Road**

**Zoning District – Rural District and Wetland & Watershed Protection District (WWPD)**

Variance Relief is requested from **Section(s) 601.1.1 and 601.3**. Specifically from **Section 601.1.1** to allow 196 sf addition to an existing dwelling to be located within the WWPD where development of structures within the WWPD are not allowed. And from **Sec. 601.3** to allow 196 sf addition, where erection of any permanent building are not allowed and associated grading and improvements within the WWPD where such use is not permitted.

46 The Chairman recused himself for this case as he lives in the neighborhood. Ms. Dunn was  
47 seated for Mr. Shea and Mr. Hughes was seated for Chairman Scholz for Case #22-2020.  
48

49 Ms. Skinner read the case, the list of abutters and the letter of authorization into the record.  
50

51 Mr. Kurt Meisner from Meisner Brem Corp addressed the Board and is representing the  
52 applicant in this case. Mr. Meisner stated there was a fire at this location about a year ago. Mr.  
53 Meisner stated that the building did encroach into the WWPd and they are looking for a variance  
54 for this encroachment. There is drip edge infiltration on the plan. There is also some disturbance  
55 in the area because of the construction to replace the structure that was burned in a fire. Also, the  
56 building is less than 1% of the total lot.  
57

58 Mr. Meisner read the 5 criteria contained in the public packet. Six to eight feet of the addition is  
59 not encroaching in the WWPd, yet, Mr. Meisner stated that it is not worth showing that lack of  
60 encroachment on the plan. Mr. Meisner restated that the encroachment is mitigated by the  
61 infiltration trenches.  
62

63 Ms. Gogumalla asked if the addition could be moved to not encroach into the WWPd. Ms. Dunn  
64 asked if it could be slid slightly left outside the WWPd. Ms. Dunn asked how much more  
65 disturbance would need to be done in order to install the proposed addition. Mr. Meisner stated  
66 that this is the best use of the property and configuration for the homeowner. Mr. Meisner stated  
67 that there is no additional damage to the buffering. It has already been disturbed for the sake of  
68 construction and that disturbance in the WWPd is as minimal as possible. Ms. Dunn asked about  
69 the proposed window, door and foundation on the proposed new addition. Mr. Meisner stated  
70 that there would be a foundation installed. Ms. Dunn asked about the elevation from the street to  
71 the ground level. Mr. Meisner indicated that it is probably about 12 feet. Ms. Dunn asked about  
72 the stone wall and the swing set on the property and asked if there was any lawn beyond the  
73 stone wall. Mr. Meisner stated there is wooded wetland beyond the stone wall.  
74

75 Ms. Gogumalla asked about the proposed foundation. Mr. Meisner stated that the addition would  
76 be an additional foundation beyond what is currently there. Ms. Gogumalla asked what would be  
77 the issue with moving the addition to the other side of the structure. Mr. Meisner stated that it  
78 would still be the same type of construction, the same type of disturbance. Mr. Meisner stated  
79 that the addition would still be in the WWPd. Mr. Meisner stated it would not be fully in the  
80 WWPd if moved. Mr. Meisner submitted the subdivision plan from 1987. Mr. Meisner stated  
81 that this shows where the house was on the lot; the house was in this place and in this location at  
82 that time. The construction was approved by the Planning Board at that time. Ms. Gogumalla  
83 stated that her only issue is additional impact in the WWPd. Ms. Meisner stated that the site has  
84 already been disturbed for the sake of this construction. Also, there will be drip line trenching  
85 added as well as vegetation to help mitigate the disturbance. Mr. Meisner stated that the property  
86 will be enhanced as a result of the use and reuse of the property.  
87

88 Ms. Colleen Holding, the homeowner, addressed the Board via telephone. Ms. Holding stated  
89 she is trying to balance her need for a home office as she rebuilds the home after a fire for herself  
90 and her three children.  
91

Mr. Mike Scholz addressed the Board. Mr. Scholz stated that he visited the site this week. Mr. Scholz stated that the drop is a 20-25 feet on the other side of the lot to the street where the addition could be installed outside the WWPD. Mr. Scholz stated that there are no trees on the side of the lot with the proposed addition; it is at grade and it is at level. If it were moved out of the WWPD, there would actually be more of a disturbance than if this were allowed to be put in the WWPD. Mr. Scholz stated that this is a modest increase in size and they are trying to stay in the footprint. Mr. Scholz stated that the WWPD covers almost the entire lot. Mr. Scholz would like to see them get back into their home and it is a challenge for the homeowner to not impact the WWPD on this lot.

Ms. Skinner read the letter from the Conservation Commission. They would like to see native vegetation and some storm water retention. Mr. Meisner stated that those items are now shown on the plan and these concerns are met on the plan.

**A motion was made by Ms. Gogumalla to enter Deliberative session at 8:14pm. Seconded by Ms. Skinner. Roll call vote- Mr. Hughes, Ms. Skinner, Ms. Gogumalla, Vice Chair Breton, and Ms. Dunn- yes. Vote 5-0. Motion passes.**

Ms. Dunn stated that she does believe it meets the five criteria as there is minimal impact to the WWPD because of the prior construction. Ms. Dunn stated she likes to look at how much the construction will disturb downstream; she sees that there is protection downstream for the wetland. Ms. Dunn stated that this is an odd shaped lot Vice Chair Breton indicted that this is a modest increase.

**A motion was made by Ms. Dunn for Case #22-2020: Parcel 9-A-909 to grant relief as requested from Section(s) 601.1.1 and 601.3. Specifically from Section 601.1.1 to allow 196 sf addition to an existing dwelling to be located within the WWPD where development of structures within the WWPD are not allowed. And from Sec. 601.3 to allow 196 sf addition, where erection of any permanent building are not allowed per plan submitted including the plan for infiltration run off dated July 30, 2020 and signed and dated by the Chair. Seconded by Mr. Hughes. Roll call vote- Mr. Hughes, Ms. Skinner, Ms. Gogumalla, Vice Chair Breton, and Ms. Dunn- yes.**

**Vote 5-0.  
Motion passes.**

Chairman Scholz left the meeting at 8:20pm.

Vice Chair Breton left Ms. Dunn and Mr. Shea seated for Case #23-2020.

**Case #23-2020: Parcel 16-D-201**

**Applicant – Edward N. Herbert Associates, Inc.**

**Owner – Indian Rock Development, LLC**

**Location – 10 Enterprise Drive**

**Zoning District - Residential A District, Rural District, Wetland & Watershed Protection**

**District (WWPD), Cobbetts Pond & Canobie Lake Watershed Protection**

**Overlay District (WPOD)**

Variance relief is requested to develop a five-lot subdivision for new single-family dwellings to be located on a private road from the following Section(s) 702 & Appendix A-1 to allow 0' of frontage on a Class V road, shown as Road "A" where 175' is required on a public road.

Ms. Skinner read the case, the list of abutters and the letter of authorization into the record.

Mr. Shayne Gendron addressed the Board for Edward E. Herbert and Associates and is representing the applicant, Indian Rock Development. Mr. Gendron stated that the applicant would like to develop this as a private road. The private road will be restrained by covenants. There is infiltration below the roadway which is not typical on a town road. Mr. Gendron stated that the project is under 8,500 square feet of disturbance which is below the need for an AOT permit. Mr. Gendron stated that the neighbors got together and stated they would like to see something a little less intense on the property since it was so close to the pond.

Ms. Gogumalla asked about where the house lots were on the road which were pointed out on the plan Ms. Gogumalla asked about the easement on the plan which was also clarified by Mr. Gendron.

Ms. Dunn asked about the development being created to town standards. It is an expensive system to replace. Mr. Gendron stated that the property drops substantially from the road to the pond and being able to be creative with the solutions will allow for mitigation on the road.

Ms. Dunn asked why this could not be a public road and be made with these improvements and then make the lots as condominiums. Mr. Gendron stated that the wish of the homeowners is for this to be a private road. Mr. Gendron stated that the impacts are very low; there is a small bioretention area. Mr. Gendron stated that it is a question before this board as to whether or not this should be a town road or a private road. Ms. Dunn asked about where this was in the process of Planning Board. Mr. Gendron stated that the Planning Board saw this several years ago and Mr. Gendron has a design review letter from Keech/Nordstrom.

Ms. Dunn asked about a joint meeting with the Planning Board and the ZBA to discuss the project.

Mr. Gendron stated he is not trying to side step the Planning Board; he would like to go through the design review process. Mr. Gendron stated that the goal was to have a limited the amount of disturbance near Cobbetts Pond. Ms. Dunn stated they are talking about something that is novel. Mr. Gendron stated that there are not roads in town that have treatment below the road way; there are parking lots that have this type of treatment below them. Mr. Gendron stated he does not see the need to continue the case or to have a joint meeting with the Planning Board but he willing to do whatever the Board asks of him.

Ms. Gogumalla asked why the town would not want a private road. Ms. Gogumalla stated that she does understand Ms. Dunn's perspective in regards to the subdivision. Mr. Gendron stated that this Board is approving the variance for the private road, not the subdivision. Mr. Gendron

184 stated that the approval can be with the condition of the approval of the subdivision by the  
185 Planning Board.

186  
187 Vice Chair Breton clarified the task before this Board. Mr. Gendron stated that he is there to ask  
188 if the houses can front on a private road instead of a town road. Maintenance of the roadway and  
189 construction of the roadway are the things that are before this board this evening. Vice Chair  
190 Breton stated that a project like this is a savings to the town. Vice Chair Breton stated that he  
191 thinks it is a win-win situation for the town.

192  
193 Mr. Gendron read the 5 criteria contained in the public packet into the record.

194  
195 Vice Chair Breton invited public comment at 8:52pm.

196  
197 Charles Marsden, 20 Viau Road, addressed the Board and stated he is concerned about the run  
198 off in the area.

199  
200 John Boss, 22 Viau Road, addressed the Board and asked when roads fail and covenants are not  
201 enforced, what happens when the condominium association does not function as well as it  
202 should. Mr. Boss asked what happens to the road if the private roads are not maintained. Mr.  
203 Boss is in favor of swales.

204  
205 Mr. Gendron stated that the covenants are reviewed by the town's attorney. If there is an issue,  
206 they have the right to go out and review. Mr. Gendron stated that they are not going to allow the  
207 road to fail. The applicant is not asking to side step any of the process and they are trying to be  
208 sensitive to the watershed area.

209  
210 Mr. Ken McCarthy, 20 North Shore Road addressed the Board. Mr. McCarthy is an abutter. Mr.  
211 McCarthy understands that the Planning Board needs to review everything next week. Mr.  
212 McCarthy stated that he is concerned that 20-30 years from now. Mr. McCarthy stated that this  
213 technology is not widely used and what could happen over time. Mr. McCarthy stated that there  
214 is so much water coming down both sides of his property.

215  
216 Mr. Gendron stated that it is inaccurate to say they are going for an approval next week; they are  
217 not. It is a process that will take several months and this process will take some time with plenty  
218 of time for input from abutters. What they are talking about is private vs. town-owned road.

219  
220 The Conservation Commission has no issues at that time according to a letter they submitted  
221 about the property.

222  
223 **A motion was made by Ms. Skinner to enter Deliberative session at 9:01pm. Seconded by**  
224 **Gogumalla. Roll call vote- Mr. Hughes, Ms. Skinner, Ms. Gogumalla, Vice Chair Breton,**  
225 **and Ms. Dunn- yes. Vote 5-0. Motion passes.**

226  
227 Ms. Dunn stated that she is not opposed to creative drainage or a 5-lot subdivision or a private  
228 road if all of the protections are in place for the long and short term. They do not have a  
229 guarantee of those things now. Ms. Dunn stated that she is looking at the plan submitted by the

applicant because this is a very tricky lot because the approval here will matter in the long term. Maybe this is the best possible plan but she thinks they are tying the hands of the Planning Board. Ms. Dunn does not think they can speak to many of these issues. Ms. Dunn would like to continue the case and not deny it.

Vice Chair Breton stated that this is not the first private road to come before the Board; there have been at least 2 others. Everything else appears Ms. Dunn asked if it was possible to grant a variance without tying the hands of the Planning Board. The Board discussed that the 5 criteria does not speak to the property according to discussion. The Board discussed that they would like to continue the case and discuss with town counsel.

**A motion was made by Ms. Dunn to come out of Deliberative session. Seconded by Ms. Skinner. Roll call vote- Mr. Hughes, Ms. Skinner, Ms. Gogumalla, Vice Chair Breton, and Ms. Dunn- yes. Vote 5-0. Motion passes.**

Town attorney question: when we ok something like a subdivision that is them going to go to the planning board, are they tying their hand and to what extended is it clear, when they approve this on the supposition of a private road with unusual aspects, does it have the potent the hands of planning board.

Mr. Gendron stated that he does not wish to be continued months out. Mr. Gendron stated his 5 criteria has been clear and he would like to know which of the 5 criteria can be improved. Mr. Gendron then asked about the drainage; he is doing nothing that the state has not approved. Mr. Gendron would like to clarify what the Board means by innovative drainage.

Ms. Dunn would like this continue to the next meeting.

**A motion was made by Ms. Skinner to continue Case #23-2020 to the first case on September 8<sup>th</sup>, 2020. Seconded by Mr. Hughes. Roll call vote- Mr. Hughes, Ms. Skinner, Ms. Gogumalla, Vice Chair Breton, and Ms. Dunn- yes. Vote 5-0. Motion passes.**

**A motion was made by Ms. Skinner to adjourn at 9:24pm. Seconded by Ms. Gogumalla. Roll call vote- Mr. Hughes, Ms. Skinner, Ms. Gogumalla, Vice Chair Breton, and Ms. Dunn- yes. Vote 5-0. Motion passes.**

Respectfully submitted by Anitra Lincicum